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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,505	04/12/2004	David D. Oren	14721.1US01	3270
7590	07/05/2005		EXAMINER	
Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			ENGLE, PATRICIA LYNN	
			ART UNIT	PAPER NUMBER

3612

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,505

Applicant(s)

OREN, DAVID D.

Examiner

Patricia L. Engle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 38-44 is/are pending in the application.
- 4a) Of the above claim(s) 19-24 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-18 and 39-44 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/29/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

1. Claims 19-24 and 38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 2, 2005.

Drawings

2. The drawings are objected to because they are informal drawings. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the third thickness sized to receive a flashing (claim 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The location on the post where the flashing would be located is shown in Fig. 2, but the post at that location is not shown and how the third recess interacts with the other recesses is not shown.

Claim Objections

4. Claims 1-18 and 38-44 are objected to because of the following informalities:
- a. In the claims there is an inconsistency in the name of the bottom rail- in claim 1, line 2 it is the base rail and in claim 1, line 4 it is the bottom rail. The Applicant should review all of the claims and make the language consistent.
- Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 44 recites the limitation "the plurality of fasteners" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1, 2, 4, 7, 8, 11 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehrlich (US Patent 6,412,854).

Regarding claim 1, Ehrlich discloses a semi-trailer sidewall construction, comprising: a horizontally aligned base rail (40); a horizontally aligned top rail (38); a plurality of vertical posts (452) coupled between the top (38) and bottom (40) rails at spaced apart intervals along a length of the top and bottom rails; a plurality of outside panels (450a, 450b) coupled between the top and base rails, separate outside panels being coupled to pairs of vertical post within the spaced apart intervals; a plurality of inside panels (448a, 448b) coupled between the top and bottom rails, separate inside panels being coupled to pairs of vertical posts within the spaced apart intervals; wherein the outside and inside panels are spaced apart (Fig. 6) a distance defined by a thickness of the posts (452).

Regarding claim 2, Ehrlich discloses the sidewall construction of claim 1, wherein the vertical posts (452) include first (470) and second (472) thicknesses, the first thickness being less than the second thickness.

Regarding claim 4, Ehrlich discloses the sidewall construction of claim 1, wherein the inside panels (448a, 448b) are coupled to the posts (452) in a non-overlapping arrangement relative to adjacent inside panels.

Regarding claim 7, Ehrlich discloses the sidewall construction of claim 2, further comprising a spacer member (446a) positioned between opposing outside and inside panel the

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within spaced interval, the spacer having a thickness substantially equal to the first post thickness.

Regarding claim 8, Ehrlich discloses the sidewall construction of claim 2, wherein the vertical posts include a third thickness defined by a recess portion at an end of the posts sized to receive a flashing member (Fig. 15).

Regarding claim 11, Ehrlich discloses the sidewall construction of claim 2, wherein the second post thickness is defined by a distance between an outer most surface and an inner most surface of the posts.

Regarding claim 43, Ehrlich discloses the sidewall construction of claim 1, wherein one of the outside panels (450a) and an opposing one of an inside panels (448a) are coupled to the post (452) with a plurality of fasteners (468), each fastener extending through the outside and inside panels and one of the vertical posts (Fig. 6).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14-16 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrlich.

Regarding claims 14-16, the thickness of the wall and posts would have been an obvious expedient. The motivation for making the walls a certain thickness would have been to make the trailer lighter, more insulated, stiffer.

Regarding claims 39-42, Ehrlich does not disclose a drain structure for fluid passage between the spaced apart area and a space outside of the sidewall construction. However, Ehrlich does disclose that the vertical posts include openings. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to provide a drain structure to allow fluid to escape the spaced apart area. The motivation would have been to prevent bacteria growth in the sidewall construction, which would create an unsafe storage area in the trailer.

12. Claims 5, 12, 13, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrlich in view of Buchholz et al. (US 2004/0256887, filed on May 22, 2003).

Ehrlich discloses the sidewall construction of claims 1, 2, 4, 7, 8, and 11.

Ehrlich does not disclose a that an inward facing primary surface of the inside panels is substantially flush mounted with a primary surface of the posts that extend inward most in the trailer (claim 5) or a plate member connected with the lower rail (claims 12 and 13).

Buchholz et al. disclose a sidewall construction of a trailer with an inward facing primary surface of the inside panels is substantially flush mounted with a primary surface of the posts that extend inward most in the trailer (Fig. 7)(claim 5) or a plate member (70,72) connected with the lower rail (claims 12) and intermediate rails (80) between the vertical posts (claim 17) which includes a hollow core and apertures (Fig. 18) formed to provide access to the hollow core (claim 18).

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Ehrlich and Buchholz are analogous art because they are from the same field of endeavor, i.e., trailer sidewall constructions.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to mount the inside panels flush with the primary surface of the inward facing surface of the post. The motivation would have been to maximize the internal storage space of the trailer. It would have been obvious to one of ordinary skill in the art at the time of the invention to include a plate member connected with the lower rail. The motivation would have been to provide a surface of the trailer wall that can be subject to loading without being damaged easily.

Therefore, it would have been obvious to combine Buchholz et al. with Ehrlich to obtain the invention as specified in claims 5, 12, 17 and 18.

Regarding claim 13, the height of the scuff plate would have been an obvious mechanical expedient and would have been decided based on loading data and how much of the sidewall is subject to scuffing and other load forces during typical loading of trailers.

13. Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehrlich in view of Ehrlich '341 (US Patent 6,824,341, filed on July 10, 2002).

Regarding claims 3 and 6, Ehrlich discloses the sidewall construction of claim 1. Ehrlich does not disclose that the outer panels are non-overlapping or are flush mounted with the outside face of the post. Ehrlich '341 in Fig. 6 discloses a sidewall construction in which the outer wall panels connect to the post in a non-overlapping manner and coupled to the posts flush with the outer face of the post. It would have been obvious to one of ordinary skill in the art at the time of the invention to mount the outside panels to the post in a non-overlapping manner and flush

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with an outside face of the post as taught by Ehrlich '341. The motivation would have been to not have to bend the outer panels in the region where the connect to the posts.

Allowable Subject Matter

14. Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Engle whose telephone number is (571) 272-6660.

The examiner can normally be reached on Monday - Friday from 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (571) 272-6659. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patricia L Engle
Primary Examiner
Art Unit 3612

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June 24, 2005